IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12474 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL KALABHAI AMBARAM

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR KB PUJARA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2001

ORAL JUDGEMENT

1. Respondent No.3 is permitted to be deleted.

Rule. Mr.Munshaw waives service of rule on behalf of respondents 1 and 2. With the consent of parties, the matter is taken up for final hearing today.

2. The petitioner was appointed as a Primary Teacher on 3.7.1961. After serving for about 27 years, the petitioner went to America on 23rd September, 1988. Before going to America, he also submitted leave application. Respondent No.1 had also granted No Objection Certificate to the petitioner at the relevant time. It seems that, thereafter, the petitioner overstayed in America. He had submitted leave report from time to time and it is not in dispute that his leave was sanctioned upto 20.12.1988. After returning from abroad, the petitioner went to resume duty on 11.5.1992. However, he was not allowed to resume his duty and his services were terminated by an order dated 10.7.1992 by relying upon Rule 33 of the B.C.S.R. It is the say of the petitioner that he was not given any opportunity of hearing before his services were terminated. The petitioner, therefore, preferred appeal before the District Primary Teachers' Tribunal under Section 24(2) of the Bombay Primary Education Act, 1947, but the same was dismissed on 19.5.1993. The petitioner, therafter, made a representation for pension, gratuity, etc., but he was not paid any of the terminal benefits. Since the petitioner had already reached superannuation age on 30.12.1999, he demanded retiral dues, but the same were not given to him. The petitioner, ultimately, approached this Court by way of this petition challenging the order of termination on the ground that the same was passed without hearing him and also praying for salaries and allowances upto 30.12.1999. The petitioner has also prayed for pension, gratuity and other retiral benefits.

3. Mr.Munshaw, who is appearing for the District Primary Education Officer, has filed reply and he submitted that before terminating the services, the petitioner was given various notices, asking to resume duty, but he had not reported for duty and, therefore, it was presumed that he was not interested in service. It was also submitted that the petitioner had remained unauthorisedly absent from December, 1988. He, therefore, submitted that in view of the aforesaid conduct of the petitioner, it can be presumed that he must have abandoned his services and that, in spite of the fact that notice was given to him, he had not resumed his duty.

4. Mr.Pujara, however, submitted that since the petitioner had already reached the age of superannuation now, there is no question of reinstating him in service. He also fairly submitted that, in any case, even if the services of the employee is terminated, then also, he is entitled to pensionary benefits. He also submitted that,

in any case, upto December, 1988, i.e. the date upto which the leave of the petitioner was sanctioned by the Department, he is entitled to have his retirement dues, which include pension, gratuity, etc. and, therefore, the petitioner was required to be paid his retiral dues considering his services for the aforesaid period upto December, 1988.

5. This Court, in its order dated 4th July, 2001, had asked the Authority to take appropriate decision in the matter of fixing the pension of the petitioner on the ground that even if the services of the petitioner was treated to have been terminated, then also, he was entitled to pensionary benefits. It is required to be noted that even upto 30th December, 1988, the petitioner had completed more than 27 years of continuous service and even on that basis, he was entitled to all his retirement dues as he has completed more than the qualifying period of service. Therefore, the Department was asked to take appropriate decision in this connection and Mr.Munshaw has also placed on record the decision dated 6.8.2001, taken by the District Primary Education Officer. It is stated in the said letter, which is addressed to the Advocate, that considering the fact that the petitioner had put in more than 27 years of service, proceedings are already initiated for giving him pension and other benefits and the T.D.O. has been informed to prepare the pension case of the petitioner. After the same is ready, it will be sent to the Local Fund Auditor for sanction and, thereafter, appropriate proceedings will be taken for the purpose of paying the benefit of pension to the petitioner. Mr.Munshaw has requested the Court to keep the aforesaid letter on record. The same is accordingly kept on record.

6. In view of the aforesaid decision, it is clarified that the petitioner is entitled to get his pension considering his services upto July, 1992 since it is not in dispute that the services of the petitioner were terminated in July, 1992. The respondents are directed to finalise the aforesaid pension case of the petitioner on the aforesaid lines at the earliest and since the pension case papers are required to be finalised without undue delay, the respondents are directed to finalise the said case papers of the petitioner, latest by 30th November, 2001 without any further delay, otherwise, the petitioner will be entitled to interest at the rate of 12% per annum if there is any further delay after 30th November, 2001. Mr.Pujara has assured the Court that so far as signing documents, etc., is concerned, the petitioner will cooperate to the full

extent. If any other retirement dues are required to be paid to the petitioner treating his services upto July, 1992, the same shall also be paid to the petitioner, latest by 30th November, 2001.

The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

It will be open for the petitioner to take direct service of this order for the purpose of communicating to the authority so that the proceedings can be expedited.

(P.B. Majmudar, J.)

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(apj)